

**ASSEMBLY BILL**

**No. 401**

---

**Introduced by Assembly Member Ruskin**

February 23, 2009

---

An act to amend Section 22064 of the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 401, as introduced, Ruskin. Financial institutions: finance lenders: exemptions.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders, as defined, by the Commissioner of Corporations and prohibits a person from engaging in the business of a finance lender or broker without a license. Until January 1, 2010, existing law exempts from its requirements a program-related investment by a private foundation, tax-exempt organization and a loan, guaranty, or investment made by a public charity, tax-exempt organization meeting specified requirements.

This bill would eliminate the January 1, 2010 sunset provision, allowing the exemptions to continue in definitely.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 22064 of the Financial Code is amended
- 2 to read:
- 3 22064. (a) This division does not apply to the following:

1 (1) A program-related investment defined in subsection (c) of  
2 Section 4944 of the Internal Revenue Code and United States  
3 Treasury Regulations Section 53.4944-3 that is made by a private  
4 foundation, tax-exempt organization within the meaning of Section  
5 509(a) of the Internal Revenue Code.

6 (2) A loan, guaranty, or investment made by a public charity,  
7 tax-exempt organization within the meaning of paragraph (1), (2),  
8 or (3) of subsection (a) of Section 509 of the Internal Revenue  
9 Code that meets all of the following requirements:

10 (A) The primary purpose of the loan, guaranty, or investment  
11 is to accomplish one or more of the exempt purposes of the public  
12 charity making the loan, as described in Section 170(c)(2)(B) of  
13 the Internal Revenue Code.

14 (B) Neither the production of income nor the appreciation of  
15 property is a significant purpose of the loan, guaranty, or  
16 investment.

17 (C) No purpose of the loan, guaranty, or investment is to  
18 accomplish one or more of the purposes described in Section  
19 170(c)(2)(D) of the Internal Revenue Code.

20 (b) Subdivision (a) shall not exempt from the provisions of this  
21 division a tax-exempt organization that is making consumer loans  
22 as defined in Sections 22203 and 22204.

23 (c) A loan that is secured by any assets owned by an individual  
24 shall be exempt under subdivision (a) only if the individual  
25 providing the security is an “accredited investor” as defined in  
26 paragraph (5) or (6) of subsection (a) of Section 230.501 of Title  
27 17 of the Code of Federal Regulations. Property held by an  
28 individual for personal, family, or household purposes, including  
29 an individual’s personal residence, may not be taken as security  
30 for a loan.

31 (d) A program-related investment by a private foundation, and  
32 any loan, guaranty, or investment made by a public charity that is  
33 exempt under subdivision (a) is subject to the implied covenant  
34 of good faith and fair dealing under Section 1655 of the Civil Code.

35 (e) (1) Subdivision (a) shall exempt from the provisions of this  
36 division a program-related investment by a private foundation, or  
37 a loan, guaranty, or investment by a public charity, only if the  
38 following conditions are satisfied:

39 (A) The organization making the program-related investment,  
40 loan, guaranty, or investment is exempt from federal income taxes

1 under Section 501(c)(3) of the Internal Revenue Code and is  
2 organized and operated exclusively for one or more of the purposes  
3 described in Section 501(c)(3) of the Internal Revenue Code.

4 (B) No part of the net earnings of the organization making the  
5 program-related investment, loan, guaranty or investment inures  
6 to the benefit of a private shareholder or individual.

7 (C) No broker's fee will be paid in connection with the making  
8 of the program-related investment, loan, guaranty, or investment  
9 or placement of the program-related investment, loan, guaranty or  
10 investment.

11 (2) This subdivision does not prohibit the organization making  
12 the program-related investment, loan, guaranty, or investment from  
13 charging interest on the loan or investment or fees on the guaranty.

14 (f) Subdivision (a) shall only exempt from the provisions of this  
15 division a program-related investment by a private foundation or  
16 a loan, guaranty, or investment by a public charity that is made  
17 for the primary purpose of accomplishing one or more of the  
18 organization's exempt purposes described in Section 501(c)(3) of  
19 the Internal Revenue Code, and no significant purpose of which  
20 is the production of income or the appreciation of property within  
21 the meaning of subsection (c) of Section 4944 of the Internal  
22 Revenue Code. A recipient shall be required to use all funds  
23 received from the private foundation or the public charity only for  
24 the charitable purposes for which the program-related investment,  
25 loan, guaranty, or investment was made.

26 (g) Subdivision (a) shall only exempt from the provisions of  
27 this division a program-related investment by a private foundation  
28 or a loan, guaranty, or investment by a public charity if the  
29 organization consummates not more than 35 loans in a calendar  
30 year. In the making and negotiating of these loans, the private  
31 foundation or public charity shall take into consideration the  
32 financial ability of the recipients to repay the loans in the time and  
33 manner provided.

34 (h) Nothing in this section is intended to abrogate or diminish  
35 the application of any other applicable laws that are designed to  
36 govern the tax-exempt organizations described in subdivision (a),  
37 including, but not limited to, laws pertaining to recordkeeping and  
38 reporting to the Attorney General and the Internal Revenue Service  
39 or to protect borrowers, including, but not limited to, laws

1 pertaining to licenses, unfair competition, usury, and conflicts of  
2 interest.

3 ~~(i) This section shall remain in effect only until January 1, 2010,~~  
4 ~~and as of that date is repealed, unless a later enacted statute, that~~  
5 ~~is enacted before January 1, 2010, deletes or extends that date.~~

O